MARIANNE J. BAILEY,
Executrix of the last will etc.,
Appellant,
v.
JOHN D. HUNTER,
Executor,
Appellee.

From the Supreme Court of Georgia.

BRIEF FOR APPELLEE.

IN THE

SUPREME COURT OF THE UNITED STATES.

MARIANNE J. BALDY,
By her next Friend, Appellant.
vs.
JOHN H. HUNTER,
Executor,
Appellee.

From the Supreme Court of Georgia.

BRIEF FOR APPELLEE.

STATEMENT OF FACT.

Baldy died in Georgia in 18—, leaving certain minor children, Hunter the intestator became their guardian, and received for his wards certain promisory notes which he collected in Confederate money. This money was the only currency at the time. Holding these funds it became his duty to invest them, and under acts of the Legislature of Georgia; Acts 1861, p. 32 and Acts 1863 and 1864, p. 29, he applied to the Judge of the Superior Court for direction. The judge directed the investment by him in certain lands and Confederate bonds. The lands were saved to the estate, but the bonds were taken from the office of Dr. Hunter when Sherman marched through Georgia. Dr. Hunter was discharged as guardian by the Ordinary of Jefferson county, Ga., but as the plaintiff was a lunatic (in the State Asylum), it is insisted that the discharge did not bind

her, and that the statute of limitations is not good against her. In the meantime Dr. Hunter died, and this suit is against his executor. There is no suggestion of bad faith, want of prudence or wrongful conduct on the part of the late guardian, and the suit is for the recovery of the value of the Confederate money received by the guardian during the war between the States, upon the ground that the investment by him in Confederate money was for the purpose of aiding and abetting the Rebellion, and therefore unauthorized and void. The State Court having original jurisdiction held that under Acts of the Legislature of Georgia he was authorized by the Judge of the Superior Court, who had jurisdiction of the person and subject matter, to make the investment, and that the investment was not in aid of the Rebellion. This judgement was affirmed by the Supreme Court of Georgia, and case is here on appeal from that court.

LAW.

The Guardian had the right to invest Confederate money in his hands under the direction of the Judge of the Superior Court having jurisdiction.

Acts of Georgia, 1861, page 32.
Acts of Georgia, 1863–1864, page 29.
Ordinances of the Conventions of Georgia, 1865–1868.
Campbell vs. Miller, 38th Georgia, 304.
Miller vs. Gould, Id., 465.
Westbrook vs. Davis, 48th Georgia, 473.
Saxon vs. Sheppard, 54th Georgia, 286.
McWhorter vs. Tarpley, Id., 291.
Nelms vs. Summers, Id., 605.
Venable vs. Cody, 68th Georgia, 171.
McCook vs. Harp, 81st Georgia, 236.

These bonds were issued by a *de facto* Government claiming to be *de jure* and maintaining that claim by an organized army. These securities were commodities bought and sold in the open market. Suppose, the

Guardian had under the order of the proper court invested the funds of his ward in land, purchased by him from the Confederate States, and to which they had apparently good title. Suppose afterwards that this land was recovered from the Guardian in ejectment, he having acted in good faith and with prudence; could it be said that he would be liable to his ward? We think not and the reason is, that the transaction would have had no connection with the war between the States, and would not have been entered into with the *intention* and and for the *purpose* of aiding the rebellion and this would be true even if the purchase money had been used by the Confederate States in aid of the rebellion.

The investment in Confederate bonds was under the Statutes of the State and the direction of the Court. The acts of the one and the decision of the other the guardian was bound as a citizen of that State to obey. Unless there were some intent on the part of the guardian by investing in Confederate bonds to aid the rebellion, his act is not wrongful. That act, under the order of the Court, had no connection whatever with the war against the United States.

The Statutes authorizing the investment were not war measures, nor in aid of it. "They were enacted to protect wards and minors in their estates at a time when everything was uncertain and all securities were doubtful. They were to regulate the intercourse between citizens of Georgia and the domestic relation of guardian and ward."

Nelms vs. Summers, 54th Georgia, page 606.

The Federal courts have no jurisdiction over the domestic relations of Guardian and Ward where the parties are all citizens of the same State and are acting under the statutes of that State.

The question is not one on which the Supreme Court of the United States is an appellate tribunal from the decision of a court of last resort of a State. It is simply a question of general public law, whether any particular act or law was in aid of the rebellion.

Texas vs. White, 7. Wallace, 700.

W. Means